

HB 1053

2004

1                                   A bill to be entitled  
 2           An act relating to gift certificates; creating s. 501.95,  
 3           F.S.; providing that it is unlawful for any person or  
 4           entity to sell a gift certificate that contains an  
 5           expiration date or a service fee; providing general  
 6           requirements with respect to gift certificates; providing  
 7           for applicability and construction of the act; authorizing  
 8           a fee; providing a definition; providing an effective  
 9           date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13           Section 1. Section 501.95, Florida Statutes, is created to  
 14 read:

15           501.95 Gift certificates; sale of gift certificates  
 16 containing expiration dates or service fees prohibited.--

17           (1) PROHIBITED ACTIVITIES.--It is unlawful for any person  
 18 or entity to sell a gift certificate to a purchaser that  
 19 contains:

20           (a) An expiration date.

21           (b) A service fee, including, but not limited to, a  
 22 service fee for dormancy.

23           (2) GENERAL PROVISIONS.--

24           (a) Any gift certificate sold after July 1, 2004, is  
 25 redeemable in cash for its cash value at no cost to the  
 26 purchaser or holder.

27           (b) A gift certificate sold without an expiration date is  
 28 valid until redeemed or replaced.

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29 (c)1. A gift certificate constitutes value held in trust  
 30 by the issuer of the gift certificate on behalf of the  
 31 beneficiary of the gift certificate. The value represented by  
 32 the gift certificate belongs to the beneficiary or to the legal  
 33 representative of the beneficiary to the extent provided by law,  
 34 and not to the issuer.

35 2. An issuer of a gift certificate who is in bankruptcy  
 36 shall continue to honor a gift certificate issued prior to the  
 37 date of the bankruptcy filing on the grounds that the value of  
 38 the gift certificate constitutes trust property of the  
 39 beneficiary.

40 (3) APPLICABILITY.--This section does not apply to any of  
 41 the following gift certificates issued on or after July 1, 2004,  
 42 provided the expiration date appears in capital letters in at  
 43 least 10-point type on the front of the gift certificate:

44 (a) Gift certificates that are distributed by the issuer  
 45 to a consumer pursuant to an awards, loyalty, or promotional  
 46 program without any money or other thing of value being given in  
 47 exchange for the gift certificate by the consumer.

48 (b) Gift certificates that are sold below face value at a  
 49 volume discount to employers or to nonprofit and charitable  
 50 organizations for fundraising purposes if the expiration date on  
 51 the gift certificates is not more than 30 days after the date of  
 52 sale.

53 (c) Gift certificates that are issued for a food product.

54 (4) CONSTRUCTION.--

55 (a) This section does not alter the terms of a gift  
 56 certificate. The terms of a gift certificate may not make its  
 57 redemption or other use invalid in the event of a bankruptcy.

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58 (b) Unless otherwise required by law, this section does  
59 not require the issuer of a gift certificate to:

60 1. Replace a gift certificate that has been lost or  
61 stolen.

62 2. Maintain a separate account for the funds used to  
63 purchase the gift certificate.

64 (c)1. This section does not create an interest in favor of  
65 the beneficiary of a gift certificate in any specific property  
66 of the issuer.

67 2. This section does not create a fiduciary or quasi-  
68 fiduciary relationship between the beneficiary of a gift  
69 certificate and the issuer, unless otherwise provided by law.

70 3. The issuer of a gift certificate has no obligation to  
71 pay interest on the value of a gift certificate held in trust  
72 under this section, unless otherwise provided by law.

73 (d) Nothing in this section prohibits fees customarily  
74 charged for or practices customarily associated with prepaid  
75 calling cards that are issued solely to provide an access number  
76 and authorization code for prepaid telecommunication services.

77 (5) FEE.--An issuer of a gift certificate may assess a fee  
78 of up to \$1 for each gift certificate issued to cover costs  
79 associated with printing or producing the gift certificate,  
80 provided that such fee is paid by the purchaser of the gift  
81 certificate at the time of purchase and is not deducted from the  
82 value of the gift certificate.

83 (6) DEFINITION.--As used in this section, "gift  
84 certificate" includes gift cards, gift cards usable only with  
85 affiliated sellers of goods or services, and gift cards usable  
86 with multiple sellers of goods or services.

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Section 2. This act shall take effect July 1, 2004.